

Background

On May 7, 2004, the Hearing Officer entered an Order in this docket establishing a procedural schedule for the filing of discovery and testimony in advance of a hearing. In that Order, the Hearing Officer also directed the members of the Coalition to provide information in support of the requested implementation dates set forth in the Coalition's *Amended Petition for Suspension* ("*Amended Petition*"). The Coalition submitted a filing on May 19, 2004 containing certain information from individual members of the Coalition in support of the *Amended Petition*.

On June 14, 2004, based on an agreement of the parties, the Hearing Officer ordered that the issues of law and fact in this matter would be deliberated by the panel assigned to this docket based on the evidentiary record reflected in the docket file. The evidentiary record would include the *Amended Petition* and supporting documentation, responses of the parties, discovery responses filed by the parties, pre-filed direct and rebuttal testimony and the parties' briefs. As a part of their agreement, the parties proposed a revised procedural schedule encompassing the completion of pre-filed testimony and incorporating a date for the filing of briefs. The parties proposed July 26, 2004 as a date on which the Authority could render a decision based on the record of the case and the briefs of the parties.

The parties submitted pre-filed testimony on June 4 and June 7, 2004. Rebuttal testimony was filed on June 22, 2004. All parties filed briefs on the issues of law and fact on July 9, 2004.

Since the filing of the *Amended Petition*, four members of the Coalition have withdrawn their requests for suspension. The Coalition filed a Notice of Withdrawal on

June 16, 2004 notifying the Authority that United Telephone Company would no longer be a party in this docket. On July 26, 2004, the Coalition filed a Notice of Withdrawal removing CenturyTel of Adamsville, Inc., CenturyTel of Claiborne, Inc., and CenturyTel of Ooltewah-Collegedale, Inc. from the list of those members petitioning for relief in this docket.

On July 26, 2004, the Hearing Officer entered an Order extending the interim suspension through August 31, 2004 to allow for the resolution of the *Motion to Compel*, the closing of the record and a decision by the Authority on the merits of the *Amended Petition*.²

Verizon Wireless' Motion to Compel

On May 17, 2004, Verizon Wireless submitted discovery requests to the Coalition pursuant to the procedural schedule established in the May 7, 2004 Order. The Coalition provided responses on May 27, 2004. In its Responses, the Coalition raised objections to seven discovery requests. On June 2, 2004, Verizon Wireless sent a letter to the Coalition seeking to resolve informally the outstanding discovery issues by providing clarifying statements as to certain requests and requesting supplemental information in response to Request Nos. 1.06, 1.09, 1.19, 1.20, 1.22, 1.23 and 1.25. In a letter dated June 10, 2004, the Coalition maintained certain objections and did not supplement its responses to Request Nos. 1.06, 1.19, 1.23 and 1.25.

On June 17, 2004, Verizon Wireless filed its *Motion to Compel* seeking an Order requiring the Coalition to answer Discovery Request Nos. 1.06, 1.19, 1.23 and 1.25. The

² It was specifically noted that the extension of the interim suspension would not exceed the 180 day time period within which the Authority must act on the *Amended Petition* pursuant to 47 U.S.C. § 251(f)(2). In the Order of May 7, 2004, the Hearing Officer determined that the 180 day period for Authority action, as required in 47 U.S.C. § 251(f)(2), did not begin until the filing of the *Amended Petition* on March 24, 2004 (Order of May 7, 2004 at 14). Therefore, the 180 day time period will not expire until September 20, 2004.

information sought by the *Motion to Compel* includes data pertaining to any bona fide requests for local number portability (LNP) received by the members of the Coalition and updated information regarding actions taken by members of the Coalition to comply with the LNP implementation requirements of the Federal Communications Commission ("FCC"). The Coalition filed a Response to the *Motion to Compel* on June 24, 2004, stating that the Coalition should not have to respond further to the discovery requests because the requests have either been answered in full or are deficient or objectionable for various specific reasons. The *Motion to Compel* filed by Verizon Wireless and the Coalition's response have raised questions regarding the current state of information in this docket.

The following is a summary of the positions of Verizon Wireless and the Coalition with respect to each of the discovery requests set forth in Verizon Wireless' *Motion to Compel*. The discovery request and the response of the Coalition are included below, followed by the Hearing Officer's findings as to each request.

1. Verizon Request No. 1.06

No. 1.06 - Has the Respondent ever received a bona fide request for interconnection, services, or network elements pursuant to Section 251(f)(1)(A) of the Federal Telecommunications Act, 47 U.S.C. §251(f)(1)(A)?

- a. If the answer to Request 1.06 is anything other than an unequivocal "no" please provide the name of the requesting provider(s) and the date of such request(s)
- b. If the answer to 1.06 is anything other than an unequivocal "no" please provide the Tennessee Regulatory Authority Docket Nos. in which the Authority considered whether or not to allow the Respondent's rural exemption to remain in place.

Coalition's Response/Objection

The Coalition objects to this request as not calling for relevant information or information that is reasonably calculated to lead to the discovery of

admissible evidence in that 47 U.S.C. § 251(f)(1)(A) of the Federal Telecommunications Act is not the appropriate statutory section for analysis as the Coalition members are seeking relief from the TRA pursuant to Section 251(f)(2).

Findings

On June 2, 2004, Verizon responded that the issue in this request is stated clearly and that the information sought is relevant. Nevertheless, Verizon restated the request as follows:

- 1.06 Has the Respondent ever received a bona fide request for LNP from a wireless carrier?
 - a. If the answer to Request 1.06 is anything other than an unequivocal “no,” please provide the name of the requesting provider(s) and the date of such request(s)

In its response to Verizon’s clarification, the Coalition maintains its objection to the Request on the grounds that the discovery schedule did not permit a party to reformulate its discovery requests and that the issue of what constitutes a “bona fide request” is a legal issue, calling for a legal response.

Discovery Request No. 1.06 as originally worded is sufficiently clear to have warranted an appropriate response without the necessity of clarifying or rewording the request. In addition, the receipt or non-receipt of requests for local number portability was addressed without specificity in the Coalition’s *Amended Petition*, and in some of the member companies’ pre-filed testimony. Asserting that the term “bona fide request” is a legal determination is not sufficient to avoid providing specific factual information pertaining to the Request.

Local number portability is a service to end-users in that the end-user may keep his or her assigned telephone number when changing local service providers within the

same exchange service area. Local number portability is request driven. The FCC, *In the Matter of Telephone Number Portability*, FCC 96-286, *First Report and Order and Further Notice of Rulemaking*, released July 2, 1996, has outlined what constitutes a valid request for local number portability, including, that certified carriers should specifically request long-term portability, identify the discrete geographic area covered by the request (the switch identification) and provide a tentative date when the service is expected.³

The Hearing Officer finds that the Coalition should provide the information asked for in Request No. 1.06. In addition, the Hearing Officer **finds** that the record in this docket lacks specific information relating to requests for LNP being made by a wireless provider to a member of the Coalition. Therefore, in requiring a response to Request No. 1.06, the Hearing Officer determines that the parties shall provide the following information to the Authority:

1. Each intervenor shall provide a copy of any request for local number portability submitted to a member of the Coalition, and
2. Each member of the Coalition shall provide a copy of any request received from an intervenor requesting local number portability.

2. Verizon Request No. 1.19

Please explain in substantive detail any and all actions and initiatives, including, but not limited to, estimates, quotes, purchase orders, vendor commitments and the like in relation to any necessary equipment or software, that Respondent has under taken to comply with the FCC's LNP implementation requirements. For each such action or initiative, please provide the dates on which the action or initiative was taken and any information or documentation related thereto in Respondent's possession or control regarding the action or initiative.

³ See *In the Matter of Telephone Number Portability*, FCC 96-286, *First Report and Order and Further Notice of Proposed Rulemaking* 1996 RM 8535 (July 2, 1996) ¶ 80

Coalition's Response/Objection

The Coalition objects to this request as being overbroad and burdensome, vague and ambiguous, and not calling for relevant information or information reasonably calculated to lead to the discovery of admissible evidence. In addition, it also calls for confidential and proprietary information that cannot be disclosed in the absence of a protective order. Without waiving these objections, those members of the Coalition who have stated that their switch will not be ready by May 24, 2004 will respond with information that is not proprietary or confidential.

The Coalition's response included the following chart detailing company-specific information.

Ardmore	Ardmore Telephone placed an order with NORTEL on 2-23-04 to install LNP software in our switches and we should have an installation schedule within the next two weeks. Ardmore is also in the process of contracting with BellSouth to be its database provider and Neustar its NPAC SMS.
Ben Lomand	N/A
Bledsoe	Bledsoe Telephone Cooperative has contracted with John Staurulakis, Inc. on May 20, 2004, to perform Service Order Administration functions and additional consultation and training. Bledsoe requested quotes from Nortel on May 12, 2004.
CenturyTel	All CenturyTel TN switches have been equipped with LNP functionality (hardware/software) as of May 24, 2004.
Crockett	LNP switch upgrades are handled by engineering firm Fail Engineering, and the applicable schedule has already been provided in Lera Roark's Statement of Projected Date for LNP Technical Capacity.
DTC	DTC received a quote from Nortel on 12/30/03. The Santera soft switch which will perform LNP functions has been ordered, delivered and installed. The Switch is in the process of being tested with anticipated "turn up" date of 10/01/04. It should be noted that in March '03, DTC purchased a soft switch from Telica which was capable of providing LNP, however due to some other technical inabilities, the Telica switch was returned in November '03.
Highland	Our Nortel Switch is in the process of being upgraded and tested to release LEC017. Estimated completion date is June 15, 2004. We still are in the process of finding a database provider.
Humphreys	N/A
Loretto	Loretto Telephone has installed LNP software into their central offices at Loretto, and the Ethridge switch will make Local Number Portability possible, if all the routing issues are worked out. Completion date of LNP software into switches 04/30/04. An agreement has been signed with BellSouth Telecommunications to perform LNP queries for our switches and testing of LNP queries has been completed. Completion date 04/30/04. The agreement with NeuStar is in the process of being implemented at this time. Date implementation began 04/23/04. The agreement with NeuStar must be completed and processed before

	LNP can be implemented. The expected completion date is 07/21/04. Cost involved is expected to be \$1,000 (filing fee) plus cost of interface to NeuStar is \$3,000 No purchase order has been issued at this time
Millington	Vendor quotes were sought in February, 2004 Vendor availability reaffirmed May, 2004. RUS 773 contracts for reimbursement were signed by MTC on May 20, 2004. Purchase orders will be issued after final RUS contract review by engineering consultant Vendor quotes software delivery after receipt of purchase order. Switch translations and testing to be finalized within six weeks of software delivery. Internal administrative procedures are currently underway. Consultants employed for administrative training scheduled for late June
North Central	N/A
Peoples	LNP switch upgrades are handled by engineering firm Fail Engineering, and the applicable schedule has already been provided in Lera Roark's Statement of Projected Date for LNP Technical Capacity.
Tellico	N/A
Tennessee Telephone	N/A
Twin Lakes	N/A
West Tennessee	LNP switch upgrades are handled by engineering firm Fail Engineering, and the applicable schedule has already been provided in Lera Roark's Statement of Projected Date for LNP Technical Capacity.
Yorkville	Our vendors are trying to get all upgrades and translations by the May 24, 2004 deadline However, we have just cut to a tandem Tecore switch last week. Both vendors, Mitel and Tecore are working together on a daily basis to get this work completed by the May deadline However, this is barring no unforeseen issues which could arise. With our previous experience with the Tecore vendor (we currently also have a Tecore switch for our cellular traffic) we feel that the quickly approaching deadline may not be met In addition, proper testing must also take place before we would be ready to port numbers

Findings

In its June 2, 2004 letter to the Coalition, Verizon noted the entry of a Protective Order in this matter on June 8, 2004. Verizon attached to its *Motion to Compel* the June 10, 2004 letter wherein the Coalition indicates that materials in response to No. 1.19 that have been designated confidential are attached. Nevertheless, Verizon states that the Coalition's submission is unresponsive to Request 1.19 because that request seeks "substantive explanations in detail."

On May 7, 2004 the Hearing Officer ordered that each member of the Coalition file:

. . .statements and documents in support of implement dates set forth in Attachment A of the Coalition's *Amended Petition*, which shall include the dates of equipment or software delivery, a schedule of vendor availability, statements of vendors regarding timelines necessary for all required LNP implementation activities, including installation, activation, testing and training.⁴

While the Coalition's response to No. 1.19 provides certain information, the chart still does not provide sufficient information.

On July 1, 2004, the Coalition filed additional information consisting of cost estimates for DTC Communications and Loretto. The information provided for DTC appears to be a bid from Nortel for the hardware and software that is LNP related. This additional information also provided page J-1 of a NeuStar contract for the Number Portability Administration Center/Service Management System. From a review of this late-filed information provided on July 1, 2004, the cost estimate information for Loretto appears to be a company in-house estimate, and the NeuStar page J-1 appears to be for a contract between NeuStar and DTC, but does not contain implementation dates, or time frames.

The July 1, 2004 information is not completely responsive to Verizon Request No. 1.19. The information was submitted on behalf of only two Coalition member companies and provides no dates or schedules. In order to effectively and accurately determine the merits of the Coalition's requested relief in this Docket, the information required by the May 7, 2004 Order is necessary. These requirements may be met by the Coalition providing complete responses to Request No. 1.19.

⁴ See *Order Granting Petitions for Intervention and Motion for Suspension Pending Proceeding and Establishing Expedited Procedural Schedule*, p.20 (May 7, 2004)

The Hearing Officer finds that the Coalition should provide the information sought in Request No. 1.19. Additionally, the information sought in Request No. 1.19 is similar to that requested by Order of the Hearing Officer issued on May 7, 2004, which requested each member of the Coalition to provide documentation supporting the LNP technical capable date in the *Amended Petition*. Therefore, based upon the granting of the *Motion to Compel* requiring an up-to-date response by each Coalition member to Request No. 1.19, the Intervenor may update their positions relative to this information. Any such update shall be filed no later than **August 30, 2004**.

3. Verizon Request Nos. 1.23 & 1.25

Verizon Request No. 1.23

Is Respondent prepared to properly route and deliver calls to wireless telephone numbers which have been ported between Commercial Mobile Radio Service ("CMRS"), Personal Communications System ("PCS"), Cellular or Wireless Providers?

- a. If the answer to Request 1.23 is anything other than an unequivocal "no," please describe the steps and procedures Respondent has implemented to route and deliver such calls.
- b. If the answer to Request 1.23 is "no" please describe why Respondent has not taken such steps.

Coalition's Response/Objection

The Coalition objects to this request as vague and ambiguous because the term "properly routed" is undefined.

Verizon Request No. 1.25

If you answered in the negative to Request 1.24 with respect to your non-portability switches, have you made arrangements with other parties to properly route calls originated by customers service by such switches to ported numbers until you are able to perform this function? If you answered in the affirmative, please explain said arrangements with particularity.

Coalition's Response/Objection

See response to discovery request number 1.23 regarding the use of the phrase "properly routed" and the response to discovery request number 1.24. In addition, the Coalition objects to the vague and ambiguous term "arrangements."

Findings

In its June 2, 2004 letter, Verizon Wireless clarified Request No. 1.23 in the following manner:

Pursuant to FCC Public Notice DA 04-1340, is Respondent prepared to route and deliver calls to wireless telephone numbers, which have been ported between Commercial Mobile Radio Service ("CMRS"), Personal Communications System ("PCS"), Cellular or Wireless Providers.

In its Clarification for Supplement to Request No. 1.25, Verizon Wireless restated the Request as follows:

1.25 – If you answered in the negative to Request 1.24, with respect to your non-portability switches, have you contracted or otherwise secured the services of other parties to perform the required LNP functionality and route calls originated by customers served by such switches to ported numbers until you are able to perform this function? If you answered in the affirmative, please explain said services with particularity.

In response to the *Motion to Compel* of Request No. 1.23, the Coalition stated:

[t]he primary issue raised by the Coalition in the docket is the lack of direction from the FCC as to how the Coalition should properly rate and route calls to a number that has been ported by a wireline customer to a wireless provider. Due to the lack of direction on this issue, the Coalition is faced with either an undue economic burden or technical infeasibility in determining how to transport such calls...[a]ccordingly, because there is no direction for the Coalition on how a call should be "properly routed," the Coalition cannot respond to this request until the uncertainties regarding this issue have been clarified by either the FCC or the TRA.⁵

As to Request No. 1.25, the Coalition objected again, stating:

⁵ *The Coalition's Response to Verizon Wireless' Motion to Compel Responses to Discovery Requests*, pp 2-3 (June 24, 2004)

[o]nce again this request calls for a response that requires knowledge of how such calls are to be 'properly routed. Verizon's reformulated request does not eliminate this issue. Until direction is given to the Coalition members either by the TRA or the FCC on this issue the Coalition simply cannot make an informed response.⁶

The Hearing Officer does not take a position regarding the Coalition's statement that rating and routing is the "primary issue" in this Docket. The Coalition's *Amended Petition* is a specific request to suspend, until sometime in the future, the FCC's deadline for the Coalition to support and provide local telephone number portability to all other requesting telecommunications carriers, wireline and wireless, with a service area inside a particular Coalition member's exchange service area. Sending call traffic to wireless carriers, in general, has been addressed by the Coalition members in testimony; however, the process by which calls are completed to ported telephone numbers is somewhat different in that a database query is required.

In its May 13, 2004 Public Notice, the FCC addressed the issue of routing calls to ported telephone numbers stating in part that "...the requirements of the LNP rules do not vary depending on how calls to the number will be routed after the port occurs. Thus, a carrier may not refuse or condition a porting request based on routing issues." In addition the FCC stated that "...all carriers have the duty to route calls to ported numbers...and ensure that their call routing procedures do not result in dropped calls to ported numbers."⁷ The Coalition is not prevented from responding and should provide information regarding the additional cost that may be incurred for the routing with specificity or how this cost will affect the end-user surcharge.

⁶ *Id.*, at 3

⁷ *Wireless Telecommunications Bureau and Wireline Competition Bureau Remind Carriers Outside the 100 Largest MSAs of the Upcoming May 24, 2004 Local Number Portability Implementation Deadline*, Public Notice DA 04-1340, p. 2 (May 13, 2004)

The Hearing Officer finds that the Coalition should provide the information asked for in Verizon Requests 1.23 and 1.25.

Extension of Interim Suspension

Because of the decision to obtain updated information pertaining to requests for LNP and technical capabilities of members of the Coalition to implement LNP, the Hearing Officer determines that the interim suspension should be extended to allow additional time for filings and review of the updated record. For these reasons, the Hearing Officer **finds** that the interim suspension should be extended through **September 20, 2004** to allow for a decision by the Authority on the merits of the *Amended Petition*.

IT IS THEREFORE ORDERED THAT:

1. *Verizon Wireless' Motion to Compel Responses to Discovery Requests* is granted as set forth in this Order.

2. The Coalition shall provide responses to Verizon Wireless' Request Nos. 1.06, 1.19, 1.23 and 1.25 as specified in this Order no later than **Monday, August 23, 2004**. A copy of the Coalition's responses shall be filed with the Office of the Chairman, with copies served on all counsel of record.

3. To the extent that the Intervenors desire to file comments or updated responses to the information filed by the Coalition, such comments or responses shall be filed no later than **Monday, August 30, 2004**.

4. Each Intervenor shall file a copy of any request submitted to a member of the Coalition for local number portability no later than **Monday, August 23, 2004**.

5. Each member of the Coalition shall provide a copy of any request received from an Intervenor requesting local number portability no later than **Monday, August 23, 2004**.

6. All filings by the Coalition and the Intervenors in compliance with this Order shall be a part of the record to be considered by the Authority in acting on the *Amended Petition* of the Coalition.

7. The interim suspension until August 31, 2004 of the Federal Communications Commission's local number portability requirements granted to the Coalition is extended through **September 20, 2004**.


J. Richard Collier, Hearing Officer